

SUPPLEMENT TO THE STATEMENT OF REASONS

This document includes information resulting from comments received by the Department during the 45-day comment period. Bracketed, bold text contains a description and/or explanation of revisions to the text following the 45-day comment period.

Section 70055. Personnel.

The amendment to Section 70055 is added to the rulemaking as a post-hearing change and is related to the other amendments made in the original filing.

Proposed non-substantive amendments.

1. In Section 70055 the name of the psychologist licensing board in subsection (a)(29) is changed from "Board of Medical Examiners" to the current name "Board of Psychology."
2. The authority and reference note is updated.

[Several commenters suggested that the reference to the name of the licensing board for psychologists be changed to reflect the board's current name.]

Section 70577. Psychiatric Unit General Requirements.

Paragraph (d)(2).

In the amendment to paragraph (d)(2) as originally proposed, the phrase "or psychologist" was added to follow the phrase "attending psychiatrist" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "attending psychiatrist or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters questioned whether determining the medical needs of a patient was within the scope of a psychologist's license. As the Department does not believe it is the agency that can answer this question, and as the agency that licenses psychologists, the Board of Psychology, did not specifically address this issue in its comment to the Department, the Department is modifying the phrase used in the initial amendment "attending psychiatrist or psychologist" to the more inclusive phrase

"licensed healthcare practitioner acting within the scope of his or her professional licensure."]

Subsection (f).

In the amendment to subsection (f) as originally proposed, the phrase "or psychologist" was added to follow the phrase "attending physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "attending physician or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters questioned whether requesting the rendering of social services was within the scope of a psychologist's license. As the Department does not believe it is the agency that can answer this question, and as the agency that licenses psychologists, the Board of Psychology, did not specifically address this issue in its comment to the Department, the Department is modifying the phrase used in the initial amendment, "physician or psychologist" to the more inclusive phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."]

Section 70703. Organized Medical Staff.

Paragraph (a)(2)

Paragraph (a)(2) is amended by adding a subparagraph (A) to provide that when psychological services within a facility owned and operated by the State are provided by clinical psychologists, clinical psychologist shall be included on the medical staff. It is not within the purview of the Department to require that clinical psychologists be included on the organized medical staff in non-state run acute care hospitals. Therefore, paragraph (a)(2)(B) is added to provide that when clinical psychological services are provided by clinical psychologists in a health facility not owned and operated by the state, the facility may enable the appointment of clinical psychologists to the medical staff.

[Several commenters expressed concern about the Department requiring that psychologists be appointed to the medical staff in non-state owned facilities, when the statute appears to make such appointments permissive. The Department has therefore amended the language to distinguish state-owned from non-state owned facilities, and to use the statutory language to include the permissive language present in Health and Safety Code Section 1316.5 for non-state owned facilities.]

Subsections (b) and (d)

Language is added to these subsections to implement the non-discrimination requirements of section 1316.5 of the Health and Safety Code, and to provide a mechanism for practitioners who believed they might have been discriminated against because of their licensure category to seek relief.

[Several commenters requested that language be added to provide an enforcement mechanism to enable practitioners to seek relief from possibly discriminatory action on the part of the organized medical staff, and to strengthen the regulatory provisions implementing section 1316.5 of the Health and Safety Code.]

Section 70706. Interdisciplinary Practice and Responsibility for Patient Care.

Subsection (b).

As a post-hearing change, the word "medical" is added to the second sentence of subsection (b) to precede the word "staff."

[Several commenters objected to this requirement as it might be read to require that psychologists be appointed to a medical staff committee even when they were not members of the medical staff. The Department has added the word "medical" to the requirement to make it clear that the appointment requirement only applies when psychologists are members of the medical staff.]

Section 70751. Medical Record Availability.

Subsection (h).

The word "physician" is deleted and replaced with the non-discriminatory language "licensed healthcare practitioner acting within the scope of his or her professional licensure" to make the provisions of this subsection consistent with the changes made to the other subsections.

[Several commenters noted that the Department had evidently overlooked making this change needed to maintain consistency within the regulation.]

Section 71053. Personnel.

This section is new to the filing but related to the other amendments made in the original filing.

Proposed non-substantive amendments.

1. In Section 71053 the name of the psychologist licensing board in subsection (a)(15) is changed from "Board of Medical Examiners" to the current name "Board of Psychology."

2. The authority and reference note is updated.

[Several commenters suggested that the reference to the name of the licensing board for psychologists be changed to reflect the board's current name.]

Section 71503. Organized Medical Staff.

Paragraph (b)(2)

Paragraph (b)(2) is amended by adding a subparagraph (A) to provide that when psychological services within a facility owned and operated by the State are provided by clinical psychologists, clinical psychologist shall be included on the medical staff. It is not within the purview of the Department to require that clinical psychologists be included on the organized medical staff in non-state run acute care hospitals. Therefore, paragraph (b)(2)(B) is added to provide that when clinical psychological services are provided by clinical psychologists in a health facility not owned and operated by the state, the facility may enable the appointment of clinical psychologists to the medical staff.

[Several commenters expressed concern about the Department requiring that psychologists be appointed to the medical staff in non-state owned facilities, when the statute appears to make such appointments permissive. The Department has therefore amended the language to distinguish state-owned from non-state owned facilities, and to use the statutory language to include the permissive language present in Health and Safety Code Section 1316.5 for non state owned facilities.]

Subsections (c) and (e)

Language is added to these subsections to implement the non-discrimination requirements of section 1316.5 of the Health and Safety Code, and to provide a mechanism for practitioners who believed they might have been discriminated against because of their licensure category to seek relief.

[Several commenters requested that language be added to provide an enforcement mechanism to enable practitioners to seek relief from possibly discriminatory action on the part of the organized medical staff, and to strengthen the regulatory provisions implementing section 1316.5 of the Health and Safety Code.]

Section 72303. Physician Services – General.

Subsection (a).

In subsection (a) the deletion of the requirement "All persons admitted or accepted for care by the skilled nursing facility shall be under the care of a physician selected by the patient or patient's authorized representative" is rescinded. The sentence, "Physician services shall mean those services provided by physicians responsible for the care of individual patients in the facility," is relocated to become the first sentence of subsection (b).

[Several commenters noted that section 1262.7 of the Health and Safety Code requires that a skilled nursing facility "shall admit a patient only upon a physician's order," and the Department believes the deletion of the current regulatory provision could conflict with this requirement.]

Subsection (b).

The first sentence of subsection (a) is moved to become the first sentence of subsection (b).

[In order to amend subsection (c) as requested by the commenters, this sentence was relocated to make it clear that even if the provision of some physician services was within the scope of practice of practitioners other than physicians, because of the provisions of section 1262.7 of the Health and Safety Code, only physicians are permitted to admit patients to skilled nursing facilities.]

Subsection (c).

Subsection (c) is amended by deleting the current language regarding the provision of services by specific categories of non-physician practitioners, and by substituting the non-discriminatory language "licensed healthcare practitioner acting within the scope of his or her professional licensure" to cover the provision of services by all categories of non-physician practitioners.

[Several commenters noted that the current language of the section implied that only physicians and the two categories of non-physician practitioners specified in subsection (c) could provide services to patients in the facility. They requested that the language be changed to encompass the provision of services by a greater number of non-physician practitioners.]

Section 72315. Nursing Services – Patient Care.

Subsection (a).

In subsection (a) the deletion of the word "physician" is rescinded.

[Several commenters noted that section 1262.7 of the Health and Safety Code requires that a skilled nursing facility "shall admit a patient only upon a physician's order," and the Department believes the deletion of the current regulatory provision could conflict with this requirement.]

Subsection (e).

Subsection (e) is amended to replace the word "physician's" with the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters noted that the Department had amended similar language in a comparable provision for Intermediate Care Facilities, section 73315, and requested that this language also be amended to keep the provisions consistent and to remove the potentially discriminatory restriction in the regulation's requirements.]

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72453. Special Treatment Program Service Unit—Rights of Patients.

Subsection (b).

In the amendment to subsection (b) as originally proposed, the phrase "or psychologist" was added to follow the phrase "physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "physician or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters objected to the Department's original amendment which added psychologists as practitioners able to deny the rights of skilled nursing facility patients in Special Treatment Programs, as current statute specifies that skilled nursing facility patients need a physician's order to be admitted to the nursing home. The Department believes the substitution of the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician" eliminates this concern even if it might not be a valid complaint, a question not within the Department's authority to address.]

Section 72515. Admission of Patients.

Subsection (a).

In subsection (a) the deletion of the word "physician's" is rescinded.

[Several commenters noted that section 1262.7 of the Health and Safety Code requires that a skilled nursing facility "shall admit a patient only upon a physician's order," and the Department believes the deletion of the current regulatory provision could conflict with this requirement.]

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72543. Patients' Health Records.

Subsection (a).

In the amendment to the fourth sentence of subsection (a) as originally proposed, the phrase "or psychologist" was added to follow the phrase "attending physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "physician or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters objected to the Department's original amendment which added psychologists as attending providers in the list of practitioners who may request to see patients' health records in a skilled nursing facility, as current statute specifies that skilled nursing facility patients need a physician's order to be admitted to the nursing home. The Department believes the substitution of the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician" eliminates this concern even if it might not be a valid complaint, a question not within the Department's authority to address.]

Section 72547. Content of Health Records.

Paragraph (a)(4).

In the amendment to paragraph (a)(4) as originally proposed, the phrase "or psychologist" was added to follow the word "Physician's" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "Physician's or psychologist" with the phrase "of a licensed healthcare practitioner acting within

the scope of his or her professional licensure." The sentences are re-structured for clarity.

[Several commenters objected to the Department's original amendment which added psychologists as practitioners able to enter orders in patients' health records. The commenters stated current statute specifies that skilled nursing facility patients need a physician's order to be admitted to the nursing home. The Department believes the substitution of the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician" eliminates this concern.]

Paragraph (a)(12).

In the amendment to paragraph (a)(12) as originally proposed, the phrase "or psychologist" was added to follow the word "physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "physician or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters objected to the Department's original amendment which added psychologists as practitioners able to enter orders in patients' health records, as current statute specifies that skilled nursing facility patients need a physician's order to be admitted to the nursing home. The Department believes the substitution of the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician" eliminates this concern even if it might not be a valid complaint, a question not within the Department's authority to address.]

Section 73301. Required Services.

This section is new to the filing but related to the other amendments made in the original filing.

Subsection (f)

In subsection (f) the word "physician" is deleted and replaced with the non-discriminatory language "licensed healthcare practitioner acting within the scope of his or her professional licensure." The proposed amendment removes language that implies only physicians shall be called in an emergency, as the list of practitioners contained in previous subsections is not limited to "physicians." Rather than listing those specific practitioners, the proposed amendment defers to scope of practice.

[Several commenters requested the amendment to this section to avoid the possibility that the only person the regulation required to be called in an emergency might not be the practitioner needed to address the emergent condition of the patient.]

Section 73303. Physician Services—General.

Subsection (b).

Subsection (b) is added to the regulation to allow an intermediate care facility to permit non-physician practitioners, operating within the scopes of their licensure, to provide care for patients that might also be provided by physicians. A similar amendment was made to section 72303, the section that contains comparable requirements for skilled nursing facilities.

[Several commenters noted that the section as written presumed that only physicians could provide the services listed in subsection (a), and this would place a restriction on the scopes of practice of non-physician practitioners that was not within the Department's authority to apply.]

Section 73315. Nursing Service—Patient Care.

Subsection (i)

In the amendment to subsection (i) as originally proposed, the phrase "or psychologist" was added to follow the word "physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "physician or psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."

[Several commenters suggested the amendment made by the Department in the original filing might be interpreted as authorizing psychologists to write orders for the treatment of physical or organic illness, not just psychological illness. In order to eliminate the possibility of misinterpretation by facilities, the Department is substituting "licensed healthcare practitioner acting within the scope of his or her professional licensure" for the phrase "physician or psychologist" contained in the original filing.]

Section 73325. Dietetic Service—Food Service.

This section is new to the filing but related to the other amendments made in the original filing.

Subsection (a)

In subsection (a) the Department is substituting the phrase "of a licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physicians."

[Several commenters claimed that it was within the scopes of practice of practitioners other than physicians to write orders concerning food required to meet patients' needs. While the Department is not in a position to determine the accuracy of these statements, it is substituting the non-discriminatory phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physicians" to eliminate the possibility that the Department might limit a practitioner's scope of practice by not allowing a facility to use the services of non-physician practitioners whose scopes of practice permitted their employment.]

Section 73399. Special Treatment Program Service Unit—Rights of Patients.

Subsection (b).

In subsection (b) the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" is substituted for the phrase "physician or psychologist."

[Several commenters expressed concern that the amendment made in the public notice document could be interpreted as authorizing psychologists to provide care that was not within their scopes of practice. The Department is therefore substituting the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for the phrase "physician or psychologist" to eliminate the possibility of misinterpretation and to maintain consistency with similar provisions in section 72453.]

Section 73449. Social Work Service Unit.

Paragraph (b)(1).

In the amendment to paragraph (b)(1) as originally proposed, the phrase "or psychologist" was added to follow the phrase "patient's physician" for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase "physician or

psychologist" with the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure. "

[Several commenters questioned whether participating in developing a plan for social work services was within the scope of a psychologist's license. As the Department does not believe it is the agency that can answer this question, and as the agency that licenses psychologists, the Board of Psychology, did not specifically address this issue in its comment to the Department, the Department is modifying the phrase used in the initial amendment, "physician or psychologist" to the more inclusive phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure."]

Section 73523. Patients' Rights.

Subsection (c)

In subsection (c), the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" is substituted for the word "physician" and the phrase "of the licensed healthcare practitioner acting within the scope of his or her professional licensure" is substituted for the word "physician's." Minor structure changes were made to the sentence for clarity.

[Several commenters claimed that it is within the scopes of practice of practitioners other than physicians to determine a patient's incapacity. While the Department does not have the authority to determine the validity of this contention, it is substituting the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician," to avoid the possibility of limiting the scopes of practice of non-physician practitioners.]

Paragraph (e)(2)

In paragraph (e)(2) the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" is substituted for the word "physician."

[Several commenters claimed that it is within the scopes of practice of practitioners other than physicians to act in consultation with a facility to determine who may serve as a patient's representative. While the Department does not have the authority to determine the validity of this contention, it is substituting the phrase "licensed healthcare practitioner acting within the scope of his or her professional licensure" for "physician," to avoid the possibility of limiting the scopes of practice of non-physician practitioners.]

ATTACHMENTS TO THE INITIAL STATEMENT OF REASONS

ATTACHMENT 1

Documents Relied Upon
available under the heading "DPH-05-010, Scope of Practice in
Licensed Health Facilities" at

<http://ww2.cdph.ca.gov/services/DPOPP/regs/Pages/ProposedRegulations.aspx>

ATTACHMENT 2

Standard language acknowledging that the proposed amendment was suggested by Psychology Shield in the November 8, 2004 petition.

ATTACHMENT 3

Standard language explaining that the proposed regulation amendment is to bring the regulation into compliance with Health and Safety Code section 1316.5.

ATTACHMENT 4

Standard language explaining that the proposed regulation amendment is to bring the regulation into compliance with Health and Safety Code sections 1315, 1316 and 1316.5.

ATTACHMENT I
Documents Relied Upon

Available under the heading "DPH-05-010, Scope of Practice in Licensed Health Facilities" at <http://ww2.cdph.ca.gov/services/DPOPP/regs/Pages/ProposedRegulations.aspx>

- A. November 8, 2004, Petition from Psychology Shield
- B. November 22, 2004, California Department of Health Services acknowledgement of receipt of November 8, 2004, petition
- C. April 26, 2005, California Department of Health Services response to the November 8, 2004 petition

ATTACHMENT 2

The proposed amendment is in response to the November 8, 2004, petition submitted to the Department by Psychology Shield (Attachment 1-A). The Department reviewed the petition and decided that the requested amendment, in addition to a number of other requests for regulation amendment, warranted consideration.

ATTACHMENT 3

The proposed amendments are consistent with Health and Safety Code section 1316.5 (a)(2) "...medical staff status shall include and provide the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure"; Health and Safety Code section 1316.5 (a)(1) "The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the [medical staff] member's respective licensure"; and Health and Safety Code section 1316.5 (b)(2) "If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physician and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination."

ATTACHMENT 4

The proposed amendments are consistent with Health and Safety Code section 1316.5 (a)(2) "...medical staff status shall include and provide the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure"; Health and Safety Code section 1316.5 (a)(1) "The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the [medical staff] member's respective licensure"; and Health and Safety Code section 1316.5 (b)(2) "If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physician and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination." The changes in language also provide consistency with Health and Safety Code section 1316 "The rules of a health facility which include provisions for use of the facility by, and staff privileges for, medical staff shall not discriminate on the basis of whether the staff member holds a M.D., D.O., or D.P.M. degree, within the scope of their respective licensure"; and Health and Safety Code section 1315 "Dental services, as defined in the Dental Practice Act, may be provided patients in health facilities licensed under this chapter. Such services shall be provided by persons licensed by the State of California pursuant to Section 1611 of the Business and Professions Code."